IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3956 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH DHANABHAI BHARWAD

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3956 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/12/2001

ORAL JUDGEMENT

By means of filing this petition, petitioner has challenged the order of detention dated 10-5-2001 passed

by the Police Commissioner, Rajkot City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the actual date of detention was 11-5-2001 whereas the order of detention was passed on 10-5-2001. It is submitted that the detenu has sent a representation on 1-6-2001 to Hon'ble Chief Minister wherein he has demanded translated copy of the English document so as to make an effective representation, but same has not been supplied to the detenu either by the State or by the detaining authority. Learned APP for the State, has fairly admitted the same.

4. It is the duty of the authority to supply copies of the documents in the language known to the detenu with the detention order. Here in this case, the medical certificates supplied to the detenu at pages 45 and 180 in the grounds of detention were in English and since the detenu does not know English language, he is not able to understand as to which type of injury has been sustained by the injured in the offence registered at Bhaktinagar Police Station and hence, there is infraction of safeguards provided under the provisions of Art.22(5) of the Constitution of India and the petitioner has been deprived of making an effective representation against the order of detention. Even no affidavit has been filed either by the detaining authority or the State stating the reasons of not providing the translated version of the documents. It has been held by a Division Bench of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. 2000(1)

G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or the State explaining satisfactorily the reasons for not supplying the translated version of the documents requested for, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 10-5-2001 passed against the detenu is hereby quashed and set aside. The detenu Dinesh Dhanabhai Bharwad is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/